IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 8010

CHARLES LORAINE BRYMER,

Appellant,

—vs.—

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal From the District Court of the United States
For the Western District of Washington,
Northern Division.

HON. EDWARD E. CUSHMAN, *Judge*

BRIEF FOR APPELLEE

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STATEMENT OF THE CASE

Charles Loraine Brymer, an alien, first arrived in the United States in 1892. On November 9th, 1895, he was convicted by a jury in the District Court of Park County, State of Colorado, of the crime of voluntary manslaughter, and by the said Court was sen-

tenced to the Colorado State Penitentiary to be confined there for a term of eight years. He was discharged from said penitentiary on January 30th, 1901, by reason of the expiration of his sentence.

The Immigration Act of February 20th, 1907, provided in Section 2 thereof that any person who had been convicted of a felony or other crime or misdemeanor involving moral turpitude should be excluded from admission to the United States. This same provision was re-enacted in the *Act of February 5th*, 1917, Ch. 29, found in Title 8 U.S.C.A. 136, par. "e". Brymer re-entered the United States on October 20th, 1907. On that date the *Act of February 20th*, 1907 was in full force and effect. He has resided here continuously since that date.

The Court denied appellant's petition for citizenship on the ground that his re-entry into the United States on October 20th, 1907, was unlawful and in violation of the United States Immigration Law in effect at the time of said entry.

AUTHORITIES

The petition in this case is based on the appellant's re-entry into the United States on October 20th, 1907, (Tr. 1, par. 5). Prior to that time he had been convicted of a felony, to-wit, voluntary manslaughter, (Tr. 9). His re-entry was, therefore, unlawful and cannot

be the basis of a petition for naturalization. If he had made it known to the inspectors that he had been convicted of the crime of manslaughter, he would not and could not have been permitted to enter. (*Act of February 20th*, 1907.)

Appellant's entire contention, as counsel construes his brief, is that, having committed the felony in the United States and then returned to Canada, his first entry having been lawful, his subsequent departure from this country and return to the country of his nativity could not take away his right to remain in the United States. The Supreme Court of the United States has ruled squarely on this issue adverse to appellant:

> "We accept the view that the word 'entry' in the provision of section 19 which directs that 'any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; . . . shall, upon the warrant of the Secretary of Labor, be taken into custody and deported,' includes any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one." *United States ex rel Volpe v. Smith*, 289 U. S. 422."

Our own Circuit Court has so ruled.

Bendel v. Nagle, 17 Fed. (2d) 719;
Weedin v. Tayokichi Yamada, 4 Fed. (2d) 455.

That the crime of voluntary manslaughter is a crime involving moral turpitude has likewise been adjudicated.

Weedin v. Tayokichi Yamada, 4 Fed. (2d) 455.

Pillisz v. Smith, 46 Fed. (2d) 769;

United States ex rel Sollano v. Doak, 5 Fed. Supp. 561.

Under the adjudicated cases, therefore, appellant entered the United States unlawfully and is subject to deportation.

That a person convicted of a crime involving moral turpitude is not eligible to citizenship has been adjudicated frequently.

In re Ross, 188 Fed. 685;

In re Caroni, 13 Fed. (2d) 954.

That his unlawful re-entry precludes appellant from citizenship can hardly be questioned.

Subhi Mustafa Sadi v. United States, 48 Fed. (2d) 1040.

The Statutes on naturalization are specific:

> "No declaration of intention shall be made by any alien under this chapter, or, if made, be valid, until the lawful entry for permanent residence of such alien shall have been established, and a certificate showing the date, place, and manner of his arrival shall have been issued; except that no such certificate shall be required if the entry was on or

before June 29, 1906." (*Act of March 2nd*, 1929, *Ch.* 536, 8 *U.S.C.A.* 377b.)

CONCLUSION

Under the Statutes of the United States, therefore, and the adjudicated cases, appellant as a matter of law was not and is not entitled to citizenship, and the judgment of the lower court must be affirmed.

Respectfully submitted,

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